



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNSD, MNDC, MNR, CNR, AAT, FF

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant to cancel a Two Month Notice to End Tenancy for Landlord's Use, a rent abatement for devalued tenancy, damages and an Order for force the landlord to permit access to and from the rental unit. The hearing was also convened to hear a cross application by the landlord for an order of possession based on a Ten Day Notice to End Tenancy for Unpaid Rent and a monetary order for rent owed.

Both the landlord and tenant were present and gave testimony in turn.

Preliminary Matter

Amending the Tenant's Application

The tenant's application filed on November 5, 2012 was seeking monetary compensation for loss of value to the tenancy and failure to provide services, damages for moving costs, compensation for loss of quiet enjoyment and an Order to compel the landlord to permit access to the unit. The tenant's application had also indicated that she was seeking to cancel a Two Month Notice to End Tenancy for Landlord's Use.

At the outset of the hearing it was confirmed that the landlord had not ever issued a valid Two Month Notice to End Tenancy for Landlord's Use.

However, around the same time that the tenant made her application, the landlord had issued a Ten Day Notice to End Tenancy for Unpaid Rent on November 2, 2012 and served it by posting it on the tenant's door on November 3, 2012.

Section 90 of the Act provides that a posted Notice is deemed to be served in 3 days, which would be November 6, 2012, the day after the tenant had already made her application.

On November 13, 2012, the landlord then made their own application to enforce the November 2, 2012 10 Day Notice. The landlord's application was joined by RTB to be heard together with the tenant's application and both were scheduled at the same time.

The tenant's application did not include a request to cancel the landlord's Notice due to the fact that the tenant had not yet received this Notice on the date that the tenant's original application was filed on November 5, 2012. The tenant stated that she did wish to amend her application to add a request for an order to cancel the Ten Day Notice to End Tenancy for Unpaid Rent dated November 2, 2012.

The amendment to the Tenant's application was allowed because the alternative for the tenant would have been to file a second application to dispute the Notice, within days of filing their first application which had been already been filed and already served on the landlord. Accordingly the tenant's request to cancel the Ten Day Notice to End Tenancy for Unpaid Rent was added as an amendment to the original application filed by the tenant.

Issues to be Decided for the Tenant's Application

Should the Ten Day Notice to End Tenancy for Unpaid Rent be cancelled?

Is the tenant entitled to a rent abatement for devalued tenancy and other damages?

Is the tenant entitled to an order to force the landlord to grant access?

Issues to be Decided for the Landlord's Application

Is the landlord entitled to an order of possession based on the Ten Day Notice to End Tenancy for Unpaid Rent?

Is the landlord entitled to a monetary order under section 67 of the *Act* for rental arrears?

Background and Evidence

Landlord's Application

The tenancy began in August 2012 and current rent is 750.00 per month. A security deposit of \$375.00 was paid.

The landlord stated that the tenant did not pay \$750.00 rent due on November 1, 2012 and a Ten Day Notice to End Tenancy for Unpaid Rent was served on the tenant by posting it on the door on November 2, 2012. The landlord testified that the tenant did not pay the arrears nor did the tenant vacate. The landlord is seeking a monetary order for the \$750.00 rent for November, \$750.00 rent owed for December and an Order of Possession.

The tenant did not dispute that the rent for November was withheld. The tenant stated that she chose not to pay the rent because the suite was illegal and she was being

forced to leave because of that fact. The tenant's position was that the landlord was not entitled to the rent in any case because of deficiencies in the suite and the withholding of services.

Tenant's Claim

The tenant testified that she agreed to rent the suite because the unit was to include access to laundry facilities and internet services.

However, according to the tenant, she was deprived of her access to the laundry for 2 and a half weeks and incurred costs of \$100.00 to do her laundry elsewhere. The tenant testified that internet was supposed to be included, however, the service was turned off and she incurred \$400.00 in charges to her phone for the internet usage. The tenant did not submit any documentary evidence in verification of the internet shut-down nor receipts for her extra costs.

The tenant testified that her shower continually leaked and still is, despite the landlord's attempt to repair it. The tenant testified that the lack of a properly functioning shower caused her a great deal of inconvenience because she has to place towels and blankets around the area. The tenant's position is that this has devalued her tenancy. The tenant estimated the value of her loss at \$300.00 for the duration of this issue. The tenant is claiming compensation for the above losses.

In addition, the tenant feels that she is entitled to be compensated \$500.00 for her moving costs as the suite was not legal and she is being forced to vacate the rental unit.

The tenant also took issue with the landlord's failure to comply with the Act by creating a written tenancy agreement and conducting a move-in condition inspection.

The landlord disputed the above claims.

The landlord acknowledged that there was a period of approximately 2 weeks during which the laundry was not left open and while they were trying to arrange a schedule. However, the landlord stated that they do not agree with the amount of devaluation due to no laundry. The landlord testified that the loss of the laundry for 2 weeks was not worth the amount of compensation being claimed by the tenant.

The landlord also disagreed with the tenant's claim that she was deprived of internet services. The landlord pointed out that they use the internet on a daily basis and would not have disconnected it. The landlord testified that there have been periods of time during which their service provider had technical difficulties but the internet access was never interfered with by the landlord.

In regard to the shower issue, the landlord stated that this problem was repaired as soon as it was reported and that any water that now appears is the result of the tenant removing the drain cover or leaving the shower door open. The landlord did not consult a professional plumber after the repair and apparently has not looked at the shower since they made the repairs. The landlord stated that the tenant never complained about any leaking after the issue was dealt with. The landlord disagrees with the amount of the tenant's claim and stated that, if any compensation is warranted, it should not exceed \$25.00.

Analysis – Landlord's Application

In regard to the rent being claimed by the landlord, I find that section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement.

Through testimony from both parties it has been established that the tenant did not pay the rent when it was due in November 2012.

When a tenant fails to comply with section 26, section 46 of the Act permits the landlord to end the tenancy by issuing a Ten-Day Notice effective on a date that is not earlier than 10 days after the date the tenant receives it. This section of the Act also provides that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent within 5 days, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution. I find that the tenant did not pay and admitted that fact.

The Ten-day Notice included written instructions on page 2, informing the tenant about how and when a tenant may dispute the notice if the claim is not being accepted. Under the heading "Important Facts" the form cautions that "*The tenant is not entitled to withhold rent unless ordered by a dispute resolution officer*".

In this instance I find that the tenant was in arrears at the time the 10 Day Notice was served on November 3, 2012 and the tenant did not pay the arrears and in fact continued to withhold the rent for December 2012.

I find that the tenant was not entitled to withhold the rent. Based on the above facts I find that the landlord is entitled to an Order of Possession.

Under the Act, I find that the landlord is entitled to monetary compensation for rental arrears in the amount of \$1,500.00 for November and December 2012.

Analysis: Tenant's Application

An Applicant's right to claim damages from another party is covered by section 7 of the Act which states that if a landlord or tenant fails to comply with the Act, the regulations or tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a Dispute Resolution Officer authority to determine the amount and order payment under the circumstances.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the tenant.

With respect to the moving costs of \$500.00 being claimed by the tenant, I find that the fact the tenant is being forced to move is due to unpaid rent, not a violation of the Act by the landlord. The termination of the tenancy is based on the landlord's issuing of a valid and enforceable Ten Day Notice to End Tenancy for Unpaid Rent. The tenant's costs for moving thus fail to meet element 2 of the test for damages and must be dismissed.

With respect to the portion of the tenant's application seeking a rent abatement for alleged restriction of internet services that were to be included in the rent, I find that the tenant did not present sufficient proof of the landlord's violation of the agreement, nor of her costs and thus the claim failed to meet the test for damages.

In regard to the deprivation of access to laundry facilities, I find that both parties agree that laundry access was a term in the tenancy agreement and that it was interrupted for a time. I accept the tenant's testimony that she incurred costs of \$100.00 due to the loss of use of the laundry and she is entitled to be compensated.

In regard to the loss of value due to the leaking shower, I find that in order to meet the tenant's obligation under section 32 of the Act, the tenant is required to report any problems to the landlord, such a leaky drain or water pipe, without delay. I find that the tenant met this obligation by reporting issue immediately to the landlord.

Under section 32 of the Act a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant. I find that, to meet this obligation, the landlord would need to respond to a report of a problem without undue delay. I find that the landlord did respond to the report of the leak.

However, I also accept the tenant's testimony that she did report that the shower was still leaking. I find that, apparently the landlord made no further effort to ensure that the problem had been resolved. This would not be in compliance with the landlord's responsibilities under section 32 of the Act.

I find that the tenancy was devalued by the difficulties the tenant endured with the cleaning up of the water after showering. I find that the tenant is entitled to be compensated in the amount of \$50.00 per month for 4 months amounting to \$200.00 for the shower malfunction issue.

Given the above, I find that the tenant is entitled to a rent abatement of \$300.00 for the temporary loss of laundry and the problem with the shower to the end of the tenancy. The remainder of the tenant's applications is dismissed without leave to reapply.

I find that the total compensation owed to the landlord is \$1,500.00 for rental arrears.

In setting off these two amounts, I find that \$1,200.00 is remaining in favour of the landlord. I hereby order the landlord to retain the tenant's \$375.00 security deposit in partial satisfaction of the claim and grant the landlord a monetary order for the remainder in the amount of \$825.00. This order must be served on the tenant and, if unpaid may be filed in Small Claims Court and enforced as an order of that court.

Based on the testimony and evidence I find that the landlord is entitled to an Order of Possession. I hereby issue an Order of Possession in favour of the landlord effective two days after service on the tenant. This order must be served on the Respondent and is final and binding. If necessary it may be filed in the Supreme Court and enforced as an order of that Court.

I order that each party is responsible for their own application fees.

Conclusion

The landlord's application is successful and the landlord is granted a monetary order and an Order of Possession. The tenant's application is partially successful and the tenant is credited with a retro-active rent abatement of \$300.00 to set off against the landlord's successful monetary claim.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 06, 2012.

Residential Tenancy Branch